

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

FILED  
NOV 16 2009  
  
CLERK

DOUGLAS WILFRED WHITE,	)	CIV. 09-5037-RHB
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

Petitioner, having received certification from the Eighth Circuit Court of Appeals to file a successive petition, filed an application for writ of habeas corpus pursuant to 28 U.S.C. § 2255. His petition alleged three grounds for relief: actual innocence, unfairness of the trial, and ineffective assistance of counsel. The Court concluded that petitioner's claims were time-barred and dismissed the action. Petitioner moved for reconsideration. The Court reviewed the motion and again determined that the petition was time-barred. Petitioner has now filed a notice of appeal and the Court must determine if a certificate of appealability shall issue. See Tiedeman v. Benson, 122 F.3d 518 (8th Cir. 1997).

Title 28 of the United States Code, section 2253 provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the

denial of a constitutional right." 28 U.S.C. § 2253(c)(2). For the reasons set forth in the Orders dated September 8, 2009, and October 21, 2009, the Court concludes that there are no issues upon which petitioner has made a substantial showing of the denial of a constitutional right. See also Fed. R. App. P. 22(b). Accordingly, it is hereby

ORDERED that a certificate of appealability is denied.

Dated this 13<sup>th</sup> day of November, 2009.

BY THE COURT:



RICHARD H. BATTEY  
UNITED STATES DISTRICT JUDGE